

BEVERAGE SALES AGREEMENT

This sets forth the agreement ("Agreement") between Bottling Group, LLC, on behalf of itself and its affiliates and/or their respective subsidiaries collectively comprising Pepsi Beverages Company, a Delaware limited liability company with its principal offices located at 1 Pepsi Way, Somers, NY 10589 ("Pepsi") and West Valley City, a Utah municipal corporation, with its principal place of business at 3600 Constitution Boulevard, West Valley City, UT 84120 (the "Customer") relating to the purchase by the Customer from Pepsi of the Products. The support described below is in lieu of any other discounts, allowances or rebates to which the Customer might otherwise be entitled from time to time.

Definitions

As used in this Agreement, the following capitalized terms shall have the respective meanings assigned thereto below.

"Beverage" or "Beverages" means all carbonated and non-carbonated, non-alcoholic drinks, however dispensed (including but not limited to Postmix Products, Packaged Products, LCT, FCBs, FUBs all of which are defined below), within the following categories: (i) colas and other flavored carbonated drinks; (ii) fruit juice, fruit juice containing and fruit flavored drinks; (iii) chilled coffee drinks; (iv) chilled tea products; (v) hypertonic, isotonic and hypotonic drinks (sports drinks and fluid replacements); (vi) energy drinks, (vii) bottled or canned water whether carbonated or still (spring, mineral or purified), (viii) liquid concentrate teas ("LCT"), and (ix) any future categories of nonalcoholic beverage products that may be distributed by Pepsi.

"Cases" shall mean the number of cases of Packaged Products purchased by the Customer from Pepsi, initially delivered in quantities of 24, 15, and 12 bottle/can units, and thereafter in such other size, quantity and type of containers as determined by Pepsi, from time to time.

"Gallons" shall mean the number of gallons of the Postmix Products, LCT, FB purchased by the Customer from Pepsi.

"Outlets" shall mean the existing Customer facilities operated under the _____ trademarks as listed in attached Exhibit A and shall include any restaurant, outlet or other facility in the Customer's system that may be opened or acquired by the Customer under those trademarks during the Term (the "Outlets"). In the event that new Outlets are added during the Term of this Agreement, the parties shall create an updated Exhibit A and attach it hereto. The Outlets shall include the parking garages or other Customer-owned/controlled/operated surrounding areas located at or within those facilities.

"Packaged Products" shall mean Beverages that are distributed in pre-packaged form (e.g., bottles and cans).

"Postmix Products" shall mean Beverages used to create and dispense fountain beverages.

"Products" shall mean Beverages manufactured, bottled, sold and/or distributed by Pepsi. A current list of Pepsi's Beverage Products is listed in attached Exhibit B which may be amended by Pepsi from time to time.

"Year" shall mean each 12-month period during the Term commencing on the first day of the Term or an anniversary thereof.

1. **Term**

The term of this Agreement shall commence on January 1_, 2015 and expire upon the later of January 1_, 2020. When fully executed, this Agreement will constitute a binding obligation of both parties until expiration or termination.

2. **Scope**

(A) **Exclusive Pouring Rights**

During the Term of this Agreement Pepsi shall have the exclusive right to make all Beverages (including Postmix Products, LCT, FB and Packaged Products) available for sale and distribution within the Customer's Outlets, including at all locations located within the Outlets where Beverages are sold and catering operations for Customer or its Outlets. Accordingly, the Products shall be the only Beverages of their respective type sold, dispensed or served anywhere at the Outlets, and Customer will cause the purchasing representative for each of the Outlets to purchase all its respective requirements for such Products directly and exclusively from Pepsi.

(B) **Ancillary Products**

During the Term, Customer will cause the purchasing representative for each of the Outlets to purchase all its respective requirements for carbon dioxide and branded disposable cups ("Ancillary Products") exclusively from Pepsi.

(C) **Advertising Rights**

Pepsi may advertise and promote its Products in and with respect to the Customer and its Outlets upon mutually agreed to terms and conditions.

3. **Performance**

This Agreement, including all of Pepsi's support to the Customer as described below, is contingent upon the Customer complying with all of the following performance criteria:

(A) **Exclusivity.** The Products shall be the exclusive Beverage of their respective types sold, dispensed or otherwise made available, or in any way advertised, displayed, represented or promoted at or in connection with the Outlets by any method or through any medium whatsoever (including without limitation print, broadcast, direct mail, coupons, handbills, displays and signage), whether public or private. In no event shall there be served, dispensed or otherwise made available, or in any way advertised, displayed, represented or promoted, beverage products licensed by, or produced by bottlers licensed by, The Coca-Cola Company or any affiliate thereof, or any other supplier of competitive nonalcoholic Beverages.

(B) **Product Mix.** The Customer represents that it shall purchase and shall cause its Outlets to purchase Products exclusively from Pepsi and that it shall use reasonable efforts to maintain a mix of Postmix Products, Packaged Products, LCT and FB at each of the Outlets throughout the Term.

(C) **Fountain Products.** The Customer shall only use the Postmix Products for use in preparing the fountain beverage products (the "Fountain Products"): (i) in accordance with the standards established by Pepsi; and (ii) only for immediate or imminent consumption and shall not resell the Postmix Products either to nonaffiliated outlets or to consumers in any form other than the Fountain Products.

(D) **Brand ID.** The Customer shall have appropriate brand identification, as identified by Pepsi, for each Beverage Product served on all menus (including catering), menuboard and postmix dispensing valves at each of the Outlets throughout the Term.

(E) **Changes in Outlet(s).** The Customer agrees that it shall promptly notify Pepsi, in writing, of each new Outlet which is opened or acquired during the Term, as well as of any Outlet which is closed, sold or otherwise disposed of during the Term so that the parties may promptly update Exhibit A.

(F) **DSD Requirement.** Customer agrees to purchase all its requirements for Products directly from PBC, and sell only those Products purchased from PBC from the Equipment provided to the Customer by PBC. Customer's failure to purchase Products directly from PBC shall be deemed a material breach of this Agreement.

4. **Consideration**

In consideration of the exclusive rights granted to Pepsi by Customer over the Term of this Agreement, and provided Customer is not in breach of this Agreement, Pepsi shall provide Customer with the following:

(A) **Initial Support Funds.** Pepsi shall provide Customer with initial support funds in the amount of **Three Thousand dollars (\$ 3,000.00)**, payable to the Customer within sixty (60) days of the signing of this Agreement by both parties (the "Initial Support Funds"). The Initial Support Funds are earned by the Customer over the Term. In the event Pepsi terminates this Agreement due to the Customer's failure to cure a breach hereof, the unearned Initial Support Funds will be repaid to Pepsi pursuant to the terms of Section 7(B)(1) herein.

(B) **Annual Support Funds.** Pepsi shall provide Customer with annual support funds in the amount of **Three Thousand dollars (\$ 3,000.00)**, payable to the Customer within sixty (60) days of the signing of this Agreement by both parties (the "Initial Support Funds"). The Initial Support Funds are earned by the Customer over the Term. In the event Pepsi terminates this Agreement due to the Customer's failure to cure a breach hereof, the unearned Initial Support Funds will be repaid to Pepsi pursuant to the terms of Section 7(B)(1) herein.

(C) Commission, as a percentage of the actual cash ("cash in bag" or "CIB") collected by PBG from the Vending Machines placed at the Facilities, less any applicable fees or deposits ("Commissions"). Such Commissions shall be at the rate(s) set forth below (the "Commission Rate") and shall be calculated as follows:

$$(\text{CIB} - \text{applicable fees/deposits}) * \text{Commission Rate} = \text{Commission due}$$

Product	Minimum Vend Price	Commission Rate*
20 oz. carbonated soft drinks, water and non-carbonated beverages	Prices Vary by Product as determined by PBG	35%
* Commission Rate stated above shall only apply to Products sold by PBG through its Vending Machines at the beginning of the Term. If PBG proposes any new products to the Customer during the Term, then PBG shall have the right to apply a different Commission Rate and/or Minimum Vend Price for such new product.		

Commission Payment. Commissions shall be remitted by PBG to the Customer within 30 days of the end of each 4-week accounting period established by PBG. PBG shall make all pertinent revenue and sales records respecting the Vending Machines available to Customer. Customer agrees that it is responsible for reviewing such records and that any claim or dispute relating to the Commissions must be brought by Customer in writing within one year of the date such Commissions payment is due. Customer further acknowledges and agrees that it shall not receive any commission payment from PBG if Commissions fail to reach a certain threshold (commissions totaling fifty dollars [\$50.00] per period or one hundred dollars [\$100.00] per quarter) amount per period or quarter. The applicable threshold amounts vary based on the payment period and will be established and communicated pursuant to PBG's policies and procedures related to its Full Service Vending business, as may be revised by PBG from time to time. **Change to Commission Rate.** Customer acknowledges and agrees that PBG established the Commission Rate based on any applicable sales tax associated with the sale of the Products through the Vending Machines as of the commencement date of this Agreement. If, during the Term, sales taxes should increase by more than five percent (5%), then PBG shall have the right to automatically reduce the Commission Rate by the same percentage amount.

(D) **Donated Products.**

Pepsi will annually provide customer with the following products free of charge

100cs – 12oz cans and/or 16.9oz water

(E) **Free Equipment Loan and Service.** As further outlined in Section 5 below, Pepsi shall provide at no cost to Customer or the Outlets necessary dispensing/selling Equipment for Beverages at the Outlets. Such Equipment shall be in sufficient quantities (in light of sales volume) as determined by Pepsi to satisfy the Outlet's reasonable needs.

5. **Equipment**

Pepsi will loan each Outlet, at no charge, appropriate equipment for dispensing the Products during the Term ("Equipment"). Customer agrees that the Equipment shall be exclusively used to display and merchandise the Products, and the Customer shall not use the Equipment to display, stock, advertise, sell or maintain any other products (including on the exterior of the Equipment). Pepsi will also provide, at no charge to the Customer, service to the Equipment. Title to such Equipment will remain vested in Pepsi or its affiliate and all such Equipment will be returned to Pepsi upon expiration or earlier termination of this Agreement. Each Year during the Term or at Pepsi's request, Customer shall provide Pepsi with a written Equipment verification list indicating the asset number, Equipment type and location of the Equipment loaned to the Customer pursuant to this Agreement. Failure to provide such verification list to Pepsi shall be deemed a material breach of this Agreement.

Pepsi will provide, at no charge to the Customer, preventative maintenance and service to the Equipment. Pepsi will also provide Customer with a telephone number to request emergency repairs and receive technical assistance related to the Equipment after business hours. Pepsi will promptly respond to each applicable Customer request, and will use reasonable efforts to remedy the related Equipment problem as soon as possible.

6. **Pricing**

Pepsi will provide Customer/Outlets a complete supply of Products during the Term of this Agreement and shall deliver such Products in a timely manner (based on mutually agreed upon delivery schedules) and in good and sanitary condition. The Products and Ancillary Products shall be purchased by the Customer from Pepsi at prices established by Pepsi. The current pricing schedule for Products is set forth on attached Exhibit B. Thereafter, the prices may be changed from time to time at Pepsi's discretion, except that Pepsi shall provide thirty (30) days notice of any price increases during the Term.

7. **General Terms**

(A) **Termination.** Either party may terminate this Agreement if the other commits a material breach of this Agreement; provided, however, that the terminating party has given the other party written notice of the breach and the other party has failed to remedy or cure the breach within thirty (30) days of such notice. If for any reason the Customer closes one or more of its Outlets for a period of ten (10) business days or more, then such event shall be deemed a material breach of this Agreement, and Pepsi shall have the right to immediately terminate this Agreement upon five (5) days prior written notice.

In the event of breach of this Agreement by one or more Outlet(s), the parties agree that Pepsi shall have the option, in lieu of termination of the entire Agreement, to terminate the Agreement only as it pertains to the applicable breaching Outlet(s) and to obtain an equitable reimbursement for the portions of funding and other costs attributable to such breaching Outlet(s).

(B) **Remedies.** If Pepsi terminates this Agreement as a result of default by Customer or its Outlets, then Customer and its Outlets will surrender to Pepsi all Equipment provided by Pepsi and shall forfeit all funding not paid as of the date of termination. In addition, Pepsi shall have the right to immediately seek reimbursement from Customer and the Outlets for the following:

(1) A payment reflecting reimbursement for all funding previously advanced by Pepsi but not earned by the Customer pursuant to the terms of this Agreement. With regard to the Initial Support Funds, the amount of such reimbursement shall be determined by multiplying the Initial Support Funds by a fraction, the numerator of which is the number of months expected to remain in the Term at the time such termination occurs and the denominator of which is the higher of 60 or the number of months expected to comprise the Term (expected length of Term shall be calculated based on volume trends as of the time of termination and the Volume Threshold). With regard to the Annual Support Funds, the amount of such reimbursement shall be determined by multiplying Annual Support Funds by a fraction, the numerator of which is the number of months remaining in the Year in which the Agreement is terminated at the time such termination occurs and the denominator of which is 12;

(2) A payment to Pepsi reflecting reimbursement for the cost of installation, service and refurbishing of Equipment provided during the Term and the cost of removal of all Equipment that has been installed in the Outlets, if applicable; and

(3) A payment for liquidated damages, for lost profits suffered by Pepsi as a result of such termination, equal to the product of \$ 11.48 multiplied by the projected number of collective Gallons/Cases of Products that Customer and its Outlets would have been expected to purchase during the remainder of the Term ("Expected Volume"); for the purposes of this calculation, 1 Case shall equal 1 Gallon and the Expected Volume amount shall be the higher of the amount of collective Cases/Gallons left to obtain the Volume Threshold or the amount of collective Cases/Gallons Customer would have been expected to purchase using Customer's current average weekly purchases during the Term as of the date of termination.

(C) **Expiration.** Upon expiration of this Agreement, if Customer has not entered into a further agreement with Pepsi for the purchase of the Products, Customer shall surrender to Pepsi all Equipment installed in the Outlets, whether leased, loaned or otherwise made available by Pepsi.

(D) **Right of Offset.** Pepsi reserves the right to withhold payments due hereunder as an offset against amounts not paid by Customer or its Outlets for Products ordered from and delivered by Pepsi pursuant to this Agreement.

(E) **Non-Disclosure.** Except as may otherwise be required by law or legal process, neither party shall disclose to unrelated third parties the terms and conditions of this Agreement without the consent of the other.

(F) **Indemnification.** Pepsi will indemnify and hold the Customer harmless from any and all suits, actions, claims, demands, losses, costs, damages, liabilities, fines, expenses and penalties (including reasonable attorneys' fees) arising out of: (i) its breach of any term or condition of this Agreement; (ii) product liability suits resulting from the use or consumption of the Products; and/or (iii) the negligence or willful misconduct of Pepsi. The Customer will indemnify and hold Pepsi, its subsidiaries, affiliates or assigns harmless from and against any and all suits, actions, claims, demands, losses, costs, damages, liabilities, fines, expenses and penalties (including reasonable attorneys' fees) arising out of: (i) its breach of any term or condition of this Agreement; and/or (ii) the negligence or willful misconduct of the Customer.

(G) **Assignment.** In the event that a third party acquires Customer or all or a group of the Outlets, or if Customer is acquired or merges with a third party, Customer will, in connection with such

transaction, cause the acquiring party/merged entity, in writing, to ratify this Agreement and assume all of the obligations of Customer hereunder. In the event that Customer does not deliver written evidence of such ratification and assumption of this Agreement by the acquiring party/merged entity within ten (10) days following the closing of the transaction, Pepsi may, at its option, terminate this Agreement effective immediately and Customer will pay to Pepsi all sums specified in paragraph 7(B) herein. The Agreement shall not be otherwise assignable without the express written consent of Pepsi.

(H) **Governing Law.** This Agreement shall be governed by the laws of the State of New York without regard to conflict of laws principles.

(I) **Price Discrepancy.** Any price discrepancy claim must be submitted to Pepsi within 365 days of the date of the invoice in question. If the Customer makes a price discrepancy claim within 90 days of the invoice date, the Customer must submit a written request specifying the particular Beverage Product, amount in dispute and reason for the dispute. This request should be addressed to:

Accounts Receivable
Pepsi-Cola Customer Service Center
P.O. Box 10
Winston-Salem, North Carolina 27102.

If the Customer makes a price discrepancy claim from 91 to 365 days after the date of invoice, in addition to the written request as specified above, the Customer must submit to Pepsi a copy of the invoice in question, copies of any check remittances pursuant to the invoice in question and any additional supporting documentation.

(J) **Tax.** The Customer acknowledges and agrees that neither Pepsi nor its affiliates shall be responsible for any taxes payable, fees or other tax liability incurred by the Customer in connection with the consideration or any other fees payable by Pepsi under this Agreement. Pepsi shall not be assessed common area maintenance fees, taxes or other charges based on its occupation of the space allocated to its Equipment at the Outlets.

(K) **Force Majeure.** Pepsi will not be responsible for any delay or lack of delivery resulting directly or indirectly from any foreign or domestic embargo, product detention, seizure, act of God, insurrection, war and/or continuance of war, the passage or enactment of any law ordinance, regulation, ruling, or order interfering directly or indirectly with or rendering more burdensome the purchase, production, delivery or payment hereunder, including the lack of the usual means of transportation due to fire, flood, explosion, riot, strike or other acts of nature or man that are beyond the control of Pepsi or that of the suppliers to Pepsi unless such contingency is specifically excluded in another part of this Agreement. Subject to the provisions below, this Agreement will be suspended as to both Beverage Product and delivery during any of the above force majeure contingencies. Any and all suspended deliveries will resume after such contingencies cease to exist, if possible, and this Agreement will resume in accordance with its terms, unless otherwise provided for herein.

(L) **Release, Discharge or Waiver.** No release, discharge or waiver of any provision hereof shall be enforceable against or binding upon either party hereto unless in writing and executed by both parties hereto. Neither the failure to insist upon strict performance of any of the agreements, terms, covenants or conditions hereof, nor the acceptance of monies due hereunder with knowledge of a breach of this Agreement, shall be deemed a waiver of any rights or remedies that either party hereto may have or a waiver of any subsequent breach or default in any of such agreements, terms, covenants or conditions.

(M) **Relationship of the Parties.** The parties are independent contractors with respect to each other. Nothing contained in this Agreement will be deemed or construed as creating a joint venture partnership between the parties.

(N) **Effect of Headings.** The headings and subheadings of the sections of this Agreement are inserted for convenience of reference only and shall not control or affect the meaning or construction of any of the agreements, terms, covenants and conditions of this Agreement in any manner.

(O) **Construction.** This Agreement has been fully reviewed and negotiated by the parties hereto and their respective legal counsel. Accordingly, in interpreting this Agreement, no weight shall be placed upon which party hereto or its counsel drafted the provision being interpreted. Wherever this Agreement provides for one party hereto to provide authorization, agreement, approval or consent to another party hereto, or provides for mutual agreement of the parties hereto, such authorization, approval, agreement or consent shall, except as may otherwise be specified herein, be given in such party's reasonable judgment and reasonable discretion, and shall be in writing unless otherwise mutually agreed by the parties. If any term or provision of this Agreement shall be found to be void or contrary to law, such term or provision shall, but only to the extent necessary to bring this Agreement within the requirements of law, be deemed to be severable from the other terms and provisions hereof, and the remainder of this Agreement shall be given effect as if the parties had not included the severed term herein.

(P) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

(Q) **Further Assurances.** Each party hereto shall execute any and all further documents or instruments and take all necessary action that either party hereto may deem reasonably necessary to carry out the proper purposes of this Agreement.

(R) **Notices.** Unless otherwise specified herein, all notices, requests, demands, consents, and other communications hereunder shall be transmitted in writing and shall be deemed to have been duly given when hand delivered, upon delivery when sent by express mail, courier, overnight mail or other recognized overnight or next day delivery service, or three (3) days following the date mailed when sent by registered or certified United States mail, postage prepaid, return receipt requested, or by telecopier, with a confirmation copy sent by recognized overnight courier, next day delivery, addressed as follows:

If to Pepsi:

Pepsi Beverages Company
3388 W 1987 S
Salt Lake City, UT 84104
Attn: Michael Jones
Recreation & Retail Foodservice Representative

With a copy to (which shall not constitute notice):

Pepsi Beverages Company
One Pepsi Way
Somers, NY 10589
Attn: Legal Department

If to Customer:

Kevin Astill, Parks & Recreation Director
West Valley City Family Fitness Center
5415 West 3100 South
West Valley City, Utah 84120

(S) **Right of First Negotiation/Refusal.** As of the commencement of this Agreement until ninety (90) days prior to the expiration of the Term, the Customer hereby agrees to grant Pepsi exclusive negotiation rights with respect to extending the current Agreement or entering into a new agreement for Beverage pouring rights at the Outlets upon expiration of the current Term. Thereafter, if the parties have not entered into a new agreement, the Customer shall be free to enter into discussions/negotiations with third parties except that Customer shall grant Pepsi the absolute right of first refusal to match any bona fide offers made by a third party with respect to Beverage pouring rights/sales at the Outlets. The Customer shall provide Pepsi with details of any such bona fide offers, and Pepsi shall have a fifteen (15) day window to decide whether it will match such offer and exercise its right of first refusal. The parties agree that beverage type/category and not brand names shall be considered for the purposes of determining a match. In the event that Pepsi declines to match such offer, or fails to respond within the fifteen (15) day period, then Customer shall be free to enter into an agreement with any third party based on terms and conditions equal or favorable to those presented to Pepsi in connection with the notice specified herein.

(T) Pepsi reserves the right to limit quantities, withhold or deduct funding as an offset to amounts not paid by Customer or terminate this Agreement if the Customer (i) sells Products directly or indirectly for resale outside of the Pepsi's exclusive territory where the Outlet operates, (ii) purchases Products outside Pepsi's exclusive territory where the Outlet operates and resells such Products within Pepsi's exclusive territory or (iii) does not comply with Pepsi's payment terms or makes an unauthorized deduction from amounts due.

(U) **Entire Agreement.** This Agreement contains the entire agreement between the parties hereto regarding the subject matter hereof and supersedes all other agreements between the parties. This Agreement may be amended or modified only by a writing signed by each of the parties.

(V) **Customer Representations.** Customer represents and warrants to Pepsi that the execution, delivery and performance of this Agreement by Customer will not violate any agreements with, or rights of, third parties. The Customer and undersigned represent that the undersigned is duly authorized and empowered to bind the Customer to the terms and conditions of this Agreement for the duration of the Term.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed as of the date set forth below.

Bottling Group, LLC

West Valley City

By: _____
Print Name: _____
Title: _____
Date: _____

By: _____
Print Name: _____
Title: _____
Date: _____

Exhibit A
Customer Outlets

West Valley City Family Fitness Center
Centennial Park Softball Diamond Complex
5415 West 3100 South
West Valley City, Utah 84120

Exhibit B
Products and Prices

Customer acknowledges and agrees (and shall require that any third parties or Food Service Providers purchasing Products through this Agreement agree) that Pepsi shall be entitled to pass-through any incremental fees, deposits, taxes or other governmentally imposed charges (whether local, state, federal or judicially imposed) and that the pass-through of any such governmentally imposed fees, deposits, taxes or charges on the Products shall not be deemed as a price increase subject to any pricing cap or notification restrictions that may be specified in this Agreement.